

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #:
 DATE FILED: 1/22/15

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

PENNSYLVANIA PUBLIC SCHOOL
 EMPLOYEES' RETIREMENT SYSTEM,
 individually and on behalf of all others
 similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, et al.,

Defendants.

11-CV-00733-WHP

CLASS ACTION

ORDER

This matter having come before this Court following the January 16, 2015 pre-motion conference concerning the bank examiner privilege, and the Court having conducted a telephone conference with respect to the briefing schedule on this matter, and good cause having been shown,

It is hereby ORDERED as follows:

- I. Defendant Bank of America Corporation ("BAC") shall produce to plaintiff, in searchable format, a log of all documents that were either withheld or redacted based solely upon the assertion of the bank examiner privilege ("BEP"). This log shall be divided into three parts:
 - a. Log "A" shall consist of all documents originating from a bank regulator and sent to or received by BAC or its agents, representatives or counsel;
 - b. Log "B" shall consist of all documents sent from BAC or its agents, representatives or counsel to a bank regulator;
 - c. Log "C" shall consist of all documents that were generated, distributed or disseminated only among BAC employees, agents, representatives or counsel and not sent to a bank regulator;

2. Within five business days after the receipt of the complete Privilege Logs A, B and C, plaintiff and BAC may each designate no more than 25 documents that were withheld or redacted based upon the BEP as exemplars of the contents of these Privilege Logs.

3. BAC shall notify the interested bank regulators of the pendency of plaintiff's motion, provide them with a copy of this Order and, if requested and subject to the stipulated protective order dated September 16, 2013, provide unredacted copies of the designated documents to the regulator or regulators having a privilege with respect to such documents.


4. Within ten business days after the completion of the designation process, plaintiff shall submit its motion and memorandum of law in support of its challenge to the BEP.

5. Within ten business days after service (which shall be deemed complete upon ECF filing) of plaintiff's motion and memorandum of law, BAC shall submit its responding papers to the plaintiff's motion and memorandum of law.

6. The regulators are invited to advise the parties of their position on the applicability of the BEP and to submit a response (including any response to this Order and the procedures contemplated hereunder). Any such response shall be filed with the Court within ten business days after service of BAC's response to Plaintiff's motion and memorandum.

7. Within ten business days from the date on which the response by the regulators is due, (a) plaintiff may file a reply memorandum of law and (b) BAC shall submit for *in camera* review any exemplar documents with respect to which any assertion of BEP is asserted by any regulator.

8. The Court shall entertain oral argument at a date to be subsequently determined.


William H. Pauley, III
United States District Judge

1/22/15

enc